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FILED

2009 SEP -1 PM 4: 26

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY KUH DEPUTY

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 GENRI MIRKADYROV,

13 Plaintiff,

14 v.

15 HORNBLLOWER CRUISES & EVENTS,
16 HORNBLLOWER YACHTS, INC., M/V LORD
17 HORNBLLOWER, her engines, apparel and
18 furniture.

19 Defendants.

CASE NO.

'09 CV 1917

MMA NLS

COMPLAINT FOR PERSONAL
INJURIES UNDER THE JONES ACT, 46
U.S.C. SEC. 688, et seq., and UNDER
THE GENERAL MARITIME LAW

(DEMAND FOR JURY TRIAL)

20 Plaintiff, GENRI MIRKADYROV, hereby alleges as follows:

21 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

22 1. This suit herein arises and is within the Admiralty and Maritime jurisdiction of the
23 above-entitled court pursuant to the Jones Act, 46 U.S.C. §688, et seq. and under the General
24 Maritime Laws, and is for personal injuries and for damages and sums to be paid therefore arising
25 out of plaintiff's employment as a crew member/deck hand aboard M/V LORD HORNBLLOWER;
26 and that plaintiff, GENRI MIRKADYROV, is a seaman within the designation of persons permitted
27 to suit herein without furnishing bond, or pre-payment of, or making deposit to secure fees, and costs
28 for entering into and prosecuting suits conforming with the provision of 28 U.S. C. Section 1916.

///

FIRST CAUSE OF ACTION
(Unseaworthiness)

2. Plaintiff realleges paragraph 1 and incorporates the same by reference as a part hereof as though fully set forth herein.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times herein mentioned, defendants, and each of them, are, and were, corporations, partnerships, associations, and/or individuals doing business within the County of San Diego, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times herein mentioned, defendants, and each of them, owned, operated, maintained, entrusted, and controlled the vessel, M/V LORD HORNBLOWER, and used and employed this vessel on navigable waters of the United States.

5. Plaintiff is further informed and believes, and based thereupon alleges that at the present time or during the pendency of this suit, the above-named defendant vessel will be in the jurisdiction of this Court.

6. That at all times herein mentioned, plaintiff was employed on the vessel, owned by the defendants, and each of them, as a chef on board the M/V LORD HORNBLOWER, and was in fact a member of the crew of the vessel; that this action is prosecuted by virtue of the provision of 46 U.S.C. Section 668, et seq., and under the General Maritime Law.

7. That at all times herein, mentioned, there was and still is in force and effect an Act of Congress known as the Merchant Marine Act, approved June 5, 1920, C.250, 41 Stat. 1007, otherwise known as the Jones Act.

8. Plaintiff is informed and believes, and based thereupon alleges, that on or about March 3, 2008, M/V LORD HORNBLOWER was engaged in maritime operations on navigable waters, and plaintiff was aboard this vessel and was in the process of performing his duties as a member of the vessel crew, when he was severely injured, causing the damages hereinafter described.

9. Plaintiff is further informed and believes, and based thereupon alleges, that the direct and proximate cause of plaintiff's injuries as above-mentioned, was the unseaworthiness of

1 defendants' vessel.

2 10. As a direct and proximate result of the unseaworthiness of the vessel of defendants,
3 and each of them, as hereinabove alleged, plaintiff, GENRI MIRKADYROV, was hurt and injured
4 in his health, strength and activity, in all parts of his body, and sustained shock and injury to his
5 nervous system and person, all of which injuries have caused and continue to cause plaintiff great
6 mental, physical and nervous anxiety, and pain and suffering. Plaintiff, GENRI MIRKADYROV,
7 is informed and believes and thereon alleges, that these injuries will result in some permanent
8 disability to plaintiff, all to his general damage, in an amount to be proven at time of trial.

9 11. As a further direct and proximate result of the unseaworthiness of the vessel of
10 defendants, and each of them, as hereinabove alleged, plaintiff, GENRI MIRKADYROV, was
11 required to, and did, employ physicians, surgeons and therapists to treat and care for him and did
12 sustain expenses for such medical treatment and care, hospitalization, medicine, and for other and
13 further medical and incidental care, for which plaintiff has incurred liability in an amount as yet
14 unascertained. Plaintiff, GENRI MIRKADYROV, prays leave of Court to amend and/or supplement
15 this Complaint to insert the actual and reasonable value of all medical and incidental expenses when
16 same have been ascertained, or to prove same at time of trial.

17 12. Plaintiff, GENRI MIRKADYROV, is informed and believes, and based thereupon
18 alleges, that as a further direct and proximate result of the unseaworthiness of the vessel of
19 defendants, and each of them, as hereinabove alleged, he will necessarily require additional medical
20 care, hospitalization, medicines, and other and further medical attention in the future and will incur
21 liability therefrom. Plaintiff, GENRI MIRKADYROV, prays leave of Court to amend and/or
22 supplement this Complaint to insert the actual and reasonable value of all said additional medical
23 and incidental expenses when same have been ascertained, or to prove same at time of trial.

24 13. As a further direct and proximate result of the unseaworthiness of the vessel of
25 defendants, and each of them, as hereinabove alleged, plaintiff, GENRI MIRKADYROV, became
26 incapacitated and was prevented from following his usual occupation for an undetermined period
27 of time; and as a result thereof, said plaintiff suffered a loss of earnings and earning capacity and
28 ability and other financial losses in an undetermined amount. Plaintiff, GENRI MIRKADYROV,

1 prays leave of Court to amend and/or supplement this Complaint to include the exact amount of said
2 loss of earnings and earning capacity and ability when ascertained, or to prove same at time of trial.

3 **SECOND CAUSE OF ACTION**
4 **(Negligence)**

5 14. Plaintiff realleges paragraphs 1 through 13, and incorporates the same as a part hereof
6 as though fully set forth herein.

7 15. Plaintiff is informed and believes that the direct and proximate cause of his injuries
8 and damages, as mentioned above, was the negligence of defendants, and each of them.

9 16. As a direct and proximate result of the negligence and carelessness of defendants, and
10 each of them, as hereinabove alleged, plaintiff, GENRI MIRKADYROV, was hurt and injured in
11 his health, strength and activity, in all parts of his body, and sustained shock and injury to his
12 nervousness system and person, all of which injuries have caused and continue to cause plaintiff
13 great mental, physical and nervous anxiety, and pain and suffering. Plaintiff, GENRI
14 MIRKADYROV, is informed and believes, and based thereupon alleges, that these injuries will
15 result in some permanent disability to plaintiff, all to his general damage, in an amount to be proven
16 at time of trial.

17 17. As a further direct and proximate result of the negligence and carelessness of
18 defendants, and each of them, as hereinabove alleged, plaintiff, GENRI MIRKADYROV, was
19 required to, and did, employ physicians, surgeons and therapists to treat and care for him and did
20 sustain expenses for such medical treatment and care, hospitalization, medicines and for other and
21 further medical and incidental care, for which plaintiff has incurred liability in an amount as yet
22 unascertained. Plaintiff, GENRI MIRKADYROV, prays leave of Court to amend and/or supplement
23 this Complaint to insert the actual and reasonable value of all medical and incidental expenses when
24 same have been ascertained, or to prove same at time of trial.

25 18. Plaintiff, GENRI MIRKADYROV, is informed and believes, and based thereupon
26 alleges, that as a further direct and proximate result of the negligence and carelessness of defendants,
27 and each of them, as hereinabove alleged, he will necessarily require additional medical care,
28 hospitalization, medicines, and other and further medical attention in the future and will incur

1 liability therefrom. Plaintiff, GENRI MIRKADYROV, prays leave of Court to amend and/or
2 supplement this Complaint to insert the actual and reasonable expenses when same have been
3 ascertained, or to prove same at time of trial.

4 19. As a further direct and proximate result of the negligence and carelessness of
5 defendants, and each of them, as hereinabove alleged, plaintiff, GENRI MIRKADYROV, became
6 incapacitated and was prevented from following his usual occupation for an undetermined period
7 of time; and as a result thereof, said plaintiff suffered a loss of earnings and earning capacity and
8 ability and other financial losses in an undetermined amount. Plaintiff, GENRI MIRKADYROV,
9 prays leave of Court to amend and/or supplement this Complaint to include the exact amount of said
10 loss of earnings and earning capacity and ability when ascertained, or to prove same at time of trial.

11 **THIRD CAUSE OF ACTION**
12 **(Maintenance and Cure)**

13 20. Plaintiff realleges paragraphs 1 through 19, and incorporates the same as a part hereof
14 as though fully set forth herein.

15 21. On or about the above time and place, while defendants' vessel was on navigable
16 waters, plaintiff became ill and injured while in the service of the vessel.

17 22. Upon plaintiff's becoming ill and injured as aforesaid, it became the duty of
18 defendants to pay plaintiff the expenses of his maintenance and cure and wages until plaintiff
19 reached maximum possible cure, which defendants have neglected to pay.

20 23. That by reason of defendants refusal and failure to pay maintenance and cure, plaintiff
21 has incurred damages, and has also incurred attorneys' fees and costs, in an amount presently
22 unknown and plaintiff is therefore entitled to attorneys' fees and costs and interest thereon, all in an
23 amount to be proven at time of trial. Plaintiff is informed and believes, and based thereupon alleged,
24 that he will suffer further damages in an amount which is not known at this time, and she prays leave
25 to insert the same when fully ascertained.

26 24. Plaintiff is further informed and believes, and based thereupon alleges, that defendants
27 failure and refusal to pay maintenance and cure was arbitrary, capricious, malicious, willful,
28 oppressive and therefore entitles plaintiff to an award of punitive damages and attorneys fees and

1 costs in an amount to be proven at time of trial.

2 WHEREFORE, plaintiff prays judgment against defendants, and each of the, as follows:

3 1. For general damages, all in an amount to be proven at the time of trial;

4 2. For medical and related expenses, past, present and future, all in an amount to be
5 proven at the time of trial;

6 3. For loss of earnings or earning ability, past, present and future, all in an amount to be
7 proven at the time of trial;

8 4. For maintenance and cure, all in an amount to be proven at time of trial;

9 5. For attorneys' fees, all in an amount to be proven at time of trial;

10 6. For exemplary and punitive damages, all in an amount to be proven at time of trial;

11 7. For a trial by jury pursuant to Rule 38, Federal Rules of Practice;

12 8. For costs of suit incurred herein; and

13 9. For such other and further relief as this Court deems just and proper.

14 Dated: September 1, 2009

LAW OFFICES OF FRIEDBERG & BUNGE

15
16
17 By: 

18 THOMAS F. FRIEDBERG, ESQ.
19 Attorneys for Plaintiff
20 GENRI MIRKADYROV

DEMAND FOR JURY

21 Plaintiff hereby demands a jury trial pursuant to Rule 38, of the Federal Rules of Practice.

22 Dated : September 1, 2009

LAW OFFICES OF FRIEDBERG & BUNGE

23
24 By: 

25 THOMAS F. FRIEDBERG, ESQ.
26 Attorneys for Plaintiff
27 GENRI MIRKADYROV
28

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

GENRI MIRKADYROV

(b) County of Residence of First Listed Plaintiff San Diego, California

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas F. Friedberg, Esq. (#110439) (619)557-0101

Law Offices of Friedberg & Bunge, 610 W. Ash St., Ste. 1400, San Diego, California 92101

DEFENDANTS 2009 SEP -1 PM 4:27

HORNBLLOWER CRUISES & EVENTS, HORNBLLOWER YACHTS, INC., M/V LORD HORNBLLOWER

County of Residence of First Listed Defendant San Francisco, California

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

09 CV 1917

MMA NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 424 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 425 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 426 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 427 Social Security	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 428 Consumer Credit	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input checked="" type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 491 Selective Service	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 792 Immigration Application	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 793 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 866 Federal Tax Suits	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 794 Other Immigration Actions	<input type="checkbox"/> 867 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 950 Constitutional of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Admiralty and Maritime Jurisdiction - Jones Act (46 U.S.C. section 688, et seq.)

Brief description of cause:

Jones Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/31/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

OK